

EXHIBIT E

JEFFERY A. STEC, PH.D. - JULY 13, 2023
IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

NIKE, INC.,)
)
Plaintiff,)
)
-vs-) No. 1:22-cv-00983-VEC
)
STOCKX LLC,)
)
Defendant.)

Video-recorded deposition of JEFFERY A. STEC,
PH.D., taken before TRACY L. BLASZAK, CSR, CRR, and
Notary Public, pursuant to the Federal Rules of Civil
Procedure for the United States District Courts
pertaining to the taking of depositions, at Suite 900,
444 West Lake Street, in the City of Chicago, Cook
County, Illinois at 9:02 a.m. on the 13th day of July,
A.D., 2023.

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There were present at the taking of this
deposition the following counsel:

DLA PIPER by
MR. JOSHUA SCHWARTZMAN
MS. TAMAR Y. DUVDEVANI
1251 Avenue of the Americas
New York, New York 10020
(212) 335-4500
joshua.schwartzman@dlapiper.com
tamar.duvdevani@dlapiper.com
on behalf of the Plaintiff;

DEBEVOISE & PLIMPTON LLP by
MR. CARL RIEHL
MS. CLARA CORREA
66 Hudson Boulevard
New York, New York 10001
(212) 909-6000
criehl@debevoise.com
ccorrea@debevoise.com
on behalf of the Defendant;

ALSO PRESENT: Mr. Robert Zellner
Legal Videographer.

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2 consider a more fulsome look at the different products
3 that Nike sells and that StockX appears to sell
4 concurrently.

5 Q Yes. But you say more than that in this section
6 of your report. You say Dr. Vigil ignored the
7 likelihood that StockX has diverted sales from Nike and
8 its authorized retail partners, right?

9 A Yes.

10 Q So is there such a likelihood or not?

11 A Well, I believe when you sell the same product
12 at the same time to the same types of consumers, you can
13 certainly have a likelihood of diverted sales. And
14 that's what believe that Dr. Vigil has ignored by not
15 looking at the products that both parties sell in the
16 context of the marketplace.

17 Q And in your report you don't quantify anywhere
18 what that likelihood is, right?

19 A I think I clearly say that it's not appropriate
20 to say it's not or that it is highly unlikely, but I
21 don't say what the percentage likelihood is, if that's
22 what you're asking.

23 Q And in your opinion, you don't express an
24 opinion -- sorry, strike that.

25 In your report you don't express an opinion

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2 that StockX definitely did divert sales from Nike or its
3 partners, right?

4 A I don't believe I say that in my report, at
5 least as best I can recall.

6 Q Some of the sales on StockX of shoes
7 concurrently being sold by Nike would have happened
8 whether or not StockX engaged in any unlawful activity,
9 right?

10 A So are you asking -- so I think I've established
11 in my report that there were the same shoes being sold
12 on both websites or by both parties, let's just say, in
13 general.

14 Are you asking whether that would have happened
15 but for the alleged misconduct, is that the question?

16 Q Well, it's not the question because I actually
17 don't state that premise.

18 What I'm saying is of the sales that you say
19 happened concurrently, some of those would have happened
20 whether or not StockX engaged in any unlawful activity,
21 right?

22 A So I think that's hard to say.

23 As I understand some of the claims, it's not
24 clear that you can say that, at least not be 100 percent
25 certain of that.

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2 June 1st or June 2nd to the previous, I guess that would
3 be May 30th or June 1st of 2022. If that's heuristic
4 that StockX uses perhaps it's whole months or whatever,
5 I can't say that. I can say whatever StockX is
6 representing that as is what I used.

7 Q Okay. So for each make and style combination in
8 your Exhibit 4.1 you looked at how many shoes of that
9 make and style combination were sold on StockX during
10 the previous 12 months, right?

11 A As reported by StockX, yes.

12 Q And you totaled those numbers across those 71
13 make and style combinations, and that's how you got the
14 number of slightly over 200,000, right?

15 A I believe that's right, yes. I think I have the
16 math somewhere in my report, but that's, that would have
17 been how the calculation was done.

18 Q So in the deposition exhibit version of Exhibit
19 4.1 there is a row highlighted in blue, and I'm happy
20 for you to look either at that row or the one in your
21 report.

22 But do you see on the deposition exhibit that
23 row is for Air Jordan 1 Retro High OG shoe in the
24 black/white/lucky green colorway?

25 A Yes, I see that.

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2 Q Okay. The column titled number of units sold on
3 StockX's web page shows that 7,629 units of that shoe
4 were sold on StockX during the prior 12 months, right?

5 A Yes, that appears to be the number.

6 Q And you included all of those 7,629 units in
7 your 200,000 figure, right?

8 A I believe the math would have added all of those
9 up, yes.

10 Q You have no reason to believe that all 7,629 of
11 those sales occurred on June 1st or June 2nd, 2023,
12 right?

13 A I've seen no evidence that that is the case.
14 I've seen no evidence that that's not case. As I've
15 said, I'm going by what StockX is representing there.

16 Q It's pretty unlikely that they all happened on
17 those two days, right?

18 MR. SCHWARTZMAN: Objection.

19 THE WITNESS: I don't know if I could say the
20 likelihood of that. You could imagine shoes being
21 introduced, and it's not clear when these shoes were
22 introduced, I don't think, or, actually, maybe we have
23 that date here.

24 So the release date here says April 15th, 2023.
25 So it looks like, at least according to StockX, these

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2 Q And then if you turn to Deposition Exhibit 12,
3 do you see in the blue highlighted row the style number
4 is the same, DZ5485-031?

5 A Yes, I see that.

6 Q And so those two rows of those two exhibits are
7 information about the same style of Nike shoe, right?

8 A Yes, the style number is the same.

9 Q In Exhibit 4.2 there are a number of size
10 availability columns, right?

11 A Yes.

12 Q And in those columns where there is an S, those
13 are sizes that were only available on StockX? I'm
14 sorry, let me make this more precise. Strike that.

15 In columns where there is an S, those are sizes
16 that for the particular style of shoe in that row were
17 available only on StockX on June 1st or 2nd, 2023, and
18 not on Nike.com, right?

19 A That's what an S would represent.

20 Q And columns that have a B in them show sizes of
21 the corresponding styles of shoes were available on both
22 StockX and Nike.com on those dates, right?

23 A Yes, the B, if that's what you're referencing,
24 yes, that's correct.

25 Q So looking at that blue row, the Air Jordan 1

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2 Retro High OG in black/white/lucky green, on June 1st,
3 2023, the only size in which that shoe was available on
4 Nike was size 17, right?

5 A Yes, that appears to correspond to the column
6 that's entitled 17.

7 Q But that size plus 24 other sizes of that style
8 were available on StockX on June 1st or 2nd, 2023,
9 right?

10 A That was a size that was available, and then
11 there appeared to be 24 other sizes that were available.

12 Q On StockX, right?

13 A On StockX, yes.

14 Q Size 17 is an unusually large shoe, right?

15 A It's towards the larger end of shoes. I'm not
16 sure I would say it's unusually large, but it certainly
17 is larger than, I think, the ordinary sizes.

18 Q A pretty low percentage of people wear a size 17
19 shoe, right?

20 MR. SCHWARTZMAN: Objection.

21 THE WITNESS: I don't know as I sit here. I
22 would be speculating. I don't know that percentage.

23 BY MR. RIEHL:

24 Q You don't know whether a size 17 shoe in this
25 style was available in Nike on May 1st, 2023, do you?

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2 But at the end of the day if you're a consumer,
3 you want to buy this shoe, you Google it, find out to
4 where it is, you can go to either StockX or Nike to buy
5 it.

6 Q Dr. Stec, are you able to identify even a single
7 sale of a Nike shoe on StockX that definitely occurred
8 at the same time that shoe was available in the same
9 size on Nike.com?

10 A That's not something that I endeavored to do in
11 this analysis. What I endeavored to do in this analysis
12 is show that if you're a consumer in the marketplace and
13 you're interested in this particular shoe where can you
14 go to buy it.

15 Now, I was focused, obviously, on Nike and
16 StockX. I'm not suggesting you couldn't go to Foot
17 Locker or Dick's or wherever and not buy the shoe there.
18 But if you're just simply looking at these two
19 companies, you could buy the shoes that I have listed
20 there at least in the sizes that I have listed there
21 from either company.

22 Q And it's not only that you weren't endeavoring
23 to do that, but, in fact, the work you did does not show
24 that there was even a single instance of a Nike shoe
25 sold on StockX at a time when the same shoe was

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2 available in the same size on Nike.com, right?

3 MR. SCHWARTZMAN: Objection.

4 THE WITNESS: So I don't have and I don't
5 believe StockX produced the exact date of each of their
6 sales for each of these shoes. So I don't have that
7 information.

8 If StockX has that information, I'm happy to
9 consider it. But at this point that information, as far
10 as I know, doesn't exist.

11 BY MR. RIEHL:

12 Q And so your study did not show definitively that
13 there was such a sale, right?

14 A So, again, I wasn't asked to look at this, but I
15 don't believe that at least I'm aware of data that could
16 provide an answer to that particular question.

17 Q And your data does not provide an answer to that
18 particular question, right, and your study does not
19 provide an answer to that question, right?

20 MR. SCHWARTZMAN: Objection.

21 THE WITNESS: Again, that's not something that
22 I was endeavoring to do. I tried to explain both in my
23 report and today what I was endeavoring to do.

24 And it's clear to me that if you're a Nike
25 consumer and you'd like to buy a particular style of